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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,036	12/22/2000	Guadalupe M. Rojas	0217.99	4213

25712 7590 07/21/2003

USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER  
NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH  
1815 N. UNIVERSITY STREET  
PEORIA, IL 61604

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

09

Application No. 798036	Applicant(s) ROJAS et al
Examiner JBL/Levy	Group Art Unit 1616
	10

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6/19/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-39 is/are pending in the application.
- Of the above claim(s) 15-39 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-39 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 1
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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Applicant's election with traverse of Group ~~III~~ amino acid species in Paper No.

invention and species is acknowledged. The traversal is on the ground(s) that applicant argues efficacy for flies to be speculative, and co extensive searches would be performed, and not a serious border. This is not found persuasive because Examiner finds methods and compositions not required to be searched in same areas, and burdensome.

The requirement is still deemed proper and is therefore made FINAL.

Claims 15-39 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

@ claims 1, 7, 10 "less than about" 1000 ppm, is indefinite, as it is not possible to define whether an amount, say, at 900ppm meets the outer in (900 is about 1000) and whether or not 1001 meets the criteria (1001 is less than 1050, which is about 1000).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by sbragia et al 5886221. see col.6, line 50+-0.78ppm of the urea compound is attractive used in baits of wood (col.8, lines 17-24, with humectant, water and applied at natural food sources (col.10, lines 5-32).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 8, 9, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mcpherson et al 6203811 in view of Henderson et al '94.

Mcpherson teaches need for feeding stimulants with termite baits containing termiticide (col.3, lines 10-15). Results can be used to direct termites from feeding on natural food sources and structures of concern (col.4, lines 41-49) to the termiticide treated bait. Cellulosic baits were used, but the instant N compounds were not specified. However Henderson shows cellulose treated baits of urea to be an attractant to termites in the presence of natural food sources (p.1). Water was present (p.2) in the

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urea bait. The range of (p.2) urea was .1-8%. Henderson also reported uric acid as attractant (p.1, bottom).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize termite baits, to use Mcpherson, modified as shown by Henderson to enhance attraction and feeding, as Mcpherson suggests, as a means to get termite to preferentially eat the bait, and toxicant, instead of the house.

The artisan would find it obvious to prepare particular ingredient combinations, color, sizes, concentration and ratios of ingredients, depending upon the particular species, number of applications, length of time for desired effects, for example.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the particular form or amount of active, carrier, or the particular locus to be treated provides any greater level of prior art expectation as claimed.

The selection of concentration of attractant ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the amount of attractant to optimize the effects desired, enhanced eating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for

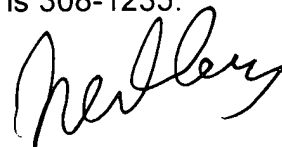
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the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

A handwritten signature in black ink, appearing to read "Neil Levy", is positioned to the right of the main text block.

Levy/tgd  
July 3, 2003